IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1400 OF 2007

Munna @ Abhay Rajgonda Patil
and Anr. .. Applicants
Versus
State of Maharashtra .. Respondents

Mr.Subhash Ingawale for applicants
Mrs.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th August 2007.

P.C.

. This bail application is placed before me because of the order of this Court (Mrs.Justice Tahilramani) dated 30th July 2007. The submission of Mr.Ingawale, learned Advocate for applicants is that the applicants did not press for bail when earlier joint application was heard by this Court. He has invited my attention to the order passed by this Court on the earlier

bail application, being Criminal Application No.8094 of 2005. The order dated 20th December 2005 records the statement of the applicants' Advocate that he does not press the application as far as applicant Nos. 1 and 2 who are presently before me. After that application was considered and granted, for other applicants, by this Court, at the same time to safeguard interest of both sides and considering gravity of the offence, it was directed that the trial be expedited and the Trial Court should endeavour and dispose of the same as expeditiously as possible.

2. Another application was filed by these very applicants being Criminal Application No.245 of 2006 and this Court on 28th April 2006 made the following order thereon:-

> ". Heard the learned Counsel for the applicant and the learned Additional

Public Prosecutor.

2. The applicants, along with two other co-accused, have preferred Criminal Application No.8094 of 2004 for bail. At the time of hearing of the said application, the learned Counsel for the applicants did not press the said application as far as the present applicants were concerned. The other two applicants were released on bail by order dated 20th December 2005.

3. When this application came up for hearing, the learned Additional Public Prosecutor, states that the trial court has fixed the trial on 3rd May 2006. In view of this statement, the learned Counsel for the applicant does not press this application. This application is accordingly disposed of".

3. The trial was fixed on the date stipulated in the order. However, it is unfortunate that the trial has not progressed.

4. The third application on behalf of these applicants being Cri.Application No.3190 of 2006 was disposed of by me on 29th August 2006 by the following order:-

> ". When the earlier bail application of the applicants was placed before this Court on 28th April 2006, this Court had recorded the statement of learned A.P.P. that the trial was fixed on 3rd May 2006. Therefore, the application was not pressed. This application is, therefore, disposed of by directing the trial court to conclude the trial as expeditiously as possible and in any event within six months from the date of receipt of copy

of this order. Application disposed of accordingly."

5. The above order clearly directed the trial court to conclude the trial within six months from the date of receipt of the copy of this Court’s order.

6. Time to dispose of Sessions Case No.283 of 2005 was extended by six months on 4th May 2007 by this Court.

7. That is how the present application, when placed before me, was argued by Mr.Ingawale. He submits that the applicants are languishing in jail since the date of their arrest whereas other accused have been enlarged on bail.

8. He submits that at no stage did these applicants sought any extensions from the Court and were fully cooperating in the expeditious

disposal of the case. My attention is invited to the chronology of events. He submits that the applicant No.1 was arrested on 2nd August 2005 whereas applicant No.2 is also in custody from the same time. He submits that despite this Court directing expeditious disposal of the case and fixing time schedule therefor, the trial has not progressed. He submits that even otherwise, this is a case where the material on record is nothing but statements of the co-accused, extra judicial confession of applicant No.1 to witness Sanjay Kadam and Patil on 19th August 2005. However, there is no recovery or discovery other than one Nylon rope. Even that has been recovered allegedly from the site but surprisingly if the victim was strangulated it is not supported by C.A. report that the same rope was used for strangulating the victim. Thus the material cannot be said to be such as would make out a strong prima facie case of the present applicants having committed the crime. Nature of

the material produced being such, this is a fit case for enlarging them on bail.

9. This request is opposed by Mrs.Deshmukh, learned A.P.P. on the ground that the trial has been expedited by this Court. All endeavours are being made by the prosecution to conclude the same. Even otherwise, this is a case where a Jain Sadhvi was strangulated by persons who were working at the instance of her relations. These relations did not approve of Sadhvi keeping contact with certain section of people. In these circumstances and when the charge being grave and serious, the application be rejected.

10. On the last occasion, I had called for a report from the Court of Additional Sessions Judge where the Sessions Case is pending. His report indicates that despite two extensions being granted by this Court, the trial could not commence. Only charges have been framed. The

prosecution evidence has not commenced because on several dates witnesses were not produced by the prosecution. Now the date fixed for prosecution witness to be examined is 20th August 2007 and the concerned court has assured that the trial would commence and concluded expeditiously.

11. The Superintendent of Police was also called upon to file an affidavit to find out as to who is responsible for the delay and non compliance with the order of the Court with regard to expeditious disposal of sessions case. Despite clear directions in the order, the affidavit as filed is vague and does not disclose any attempts to produce prosecution witness. Thus, the sense of urgency and devotion to duty that was expected while investigating and conducting criminal cases is not at all reflected from this affidavit. Para 9 of this affidavit reads thus:-

"9. I say and submit that in above matter the charge was framed by Hon'ble Sessions Court, Sangli on 13.1.2006. Thereafter, the said matter is transferred from one court to another and four different Court's till today. The next date of hearing is fixed on 20.8.2007. Till today on 18.5.2007 summons has been issued to seven witnesses, on 19.5.2007 summons has been issued to six witnesses, on 12.6.2007 summons has been issued to thirteen witnesses, on 6.7.2007 summons has been issued to four witnesses and the said summonses were served upon witnesses. On 7.5.2007 P.I. Sangli Rural Police Station received intimation for issuance of summonses to witnesses from Court. On 12.6.2007 witnesses were present before learned 3rd Additional Sessions Judge, Sangli and on the said date some of the

accused filed application for exemption therefore, hearing was adjourned and witnesses be called on 6.7.2007."

12. Hence, apart from stating that witness summonses have been issued to several witnesses and blaming the court for not taking up the matter or the defence for not cooperating, the affidavit is silent with regard to the non service of summonses on the prosecution witnesses. It may be that the matter has travelled from Court to Court but that is no reason why summonses to witnesses should not be served and their presence secured on the date fixed for trial.

13. Mrs.Deshmukh has assured me that now on 20th August 2007 the prosecution would commence recording of evidence and endeavour to complete the trial within the time frame stipulated by this Court. Prosecution would also make all

efforts and would cooperate even in day to day conducting of the criminal case.

14. Considering the affidavit filed by the Superintendent of Police so also the report of the Court, in my view, interest of justice would be sub-served if this application is disposed of by granting liberty to the applicants to apply for bail if the trial does not commence on 20th August 2007. In other words, if the prosecution fails to examine any witness on that date, liberty is granted to applicants to apply for bail and such an application, if made, should be considered by the trial court uninfluenced by any order and observations made earlier, including those by this Court. The trial court should also not be influenced by the fact that earlier these applicants did not press for bail or their applications were rejected.

15. It is only in the light of the grievances

made by Mr.Ingawale before me and the contents of the report so also the affidavit filed by the prosecution that this liberty is granted to the applicants. Application stands disposed of with liberty as above.

16. Needless to state that all concerned to endeavour and dispose of the case within the time stipulated by this Court. Since two extensions have already been granted, it is expected that the Court would take up the case in right earnest and if at all any further extension is necessary, such a request would be made only in exceptional circumstances. All concerned to appear before the trial court on 16th August 2007 and on that date the trial court should fix the date for examination of prosecution and defence witness. All concerned to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)